UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG (CHARLOTTESVILLE) DIVISION

IN RE:	)	
	)	
ALAN/DUNCAN PROPERTIES, LLC,	)	Case No. 16-61360
	)	
Debtor,	)	
--	)	
SNYDER & SCHNEIDER PROPERTY DEVELOPMENT, LLC,	)	Case No. 16-61362
	)	
Debtor,	)	
--	)	
SNYDER VIRGINIA PROPERTIES, LLC,	)	Case No. 16-61364
	)	
Debtor.	)	

Response and Objection to Application to Employ Debtors' Counsel

Judy A. Robbins, United States Trustee for Region Four, by counsel, objects to the application to employ Edward G. Gonzalez ("Gonzalez") as counsel for the debtors and, in support thereof, states as follows:

I. Procedural Background

1. Each of the above referenced debtors filed a voluntary petition under Chapter 11 on July 6, 2016.

2. By applications dated August 10, 2016, each of the debtors seeks to employ Gonzalez.[1]

3. By operation of Local Rule 2014-1, these objections are timely.

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[1] The application does not seek approval of counsel's employment retroactive to the date of filing. If counsel wishes for employment to be approved as of the petition date, an amended application should be filed seeking same with an explanation for the delay in seeking court approval of his employment.

II. Factual Background

4. Each application recites that a $20,000 retainer was received from the debtor. On information and belief, only one $20,000 retainer was received. The applications need to be amended to accurately reflect what transpired. In addition, the applications need to be amended to reflect the proposed allocation of funds between these debtors.

5. Despite the fact that each application recites that a retainer was received from the debtor, each Rule 2016 Disclosure and each Statement of Financial Affairs reflects that the funds were received from Jeff Snyder. The applications need to be amended to accurately reflect from who or whom these funds were received. In addition, the applications need to disclose Mr. Snyder role with and connections to each debtor.

6. Despite the fact that each application recites that a retainer was received on July 5, 2016, each Rule 2016 Disclosure and each Statement of Financial Affairs reflects that funds were received on July 6, 2016 (date of filing). On information and belief, the funds were received by proposed counsel on July 6, 2016. The applications need to be amended to accurately reflect what occurred.

7. The applications are silent as to what, if any, pre-petition services were rendered in connection with the bankruptcy filing. Additionally, it is unclear if counsel was compensated for those services or has waived the right to be compensated for them.

III. Law And Argument

8. Section 327 of the Bankruptcy Code provides that "…the trustee, with the court's approval, may employ one or more attorneys…that do not hold or represent an interest adverse to the estate, and that are disinterested person…." In chapter 11 cases, if no trustee has qualified,

the debtors are debtors in possession and have the same rights, powers and duties as a trustee. 11 U.S.C. § 1107.

9. The disclosure requirements of § 329 are "'mandatory[,] not permissive.'" *Jensen v. United States Trustee (In re Smitty's Truck Stop, Inc.)*, 210 B.R. 844, 848 (10th Cir. BAP 1997) *citing Turner v. Davis, Gillenwater & Lynch (In re Investment Bankers, Inc.)*, 4 F.3d 1556, 1565 (10th Cir.1993) (citing *In re Bennett*, 133 B.R. 374, 378 (Bankr.N.D.Tex.1991)). "'[D]ebtor's counsel [must] lay bare all its dealings ... regarding compensation.... Counsel's fee revelations must be direct and comprehensive. Coy, or incomplete disclosures ... are not sufficient.'" *Neben & Starrett, Inc. v. Chartwell Fin. Corp. (In re Park–Helena Corp.)*, 63 F.3d 877, 881 (9th Cir.1995) (alterations in original) (quoting *In re Saturley*, 131 B.R. 509, 516–17 (Bankr. D. Me.1991)); *see also In re Plaza Hotel Corp.*, 111 B.R. 882, 883 (Bankr. E.D. Cal.1990) (attorney's duty is to completely disclose all facts regarding his employment), *aff'd without op.*, 123 B.R. 466 (9th Cir. BAP 1990). "Negligent or inadvertent omissions 'do not vitiate the failure to disclose.'" *Park–Helena*, 63 F.3d at 881 (quoting, *In re Maui 14K, Ltd.*, 133 B.R. 657, 660 (Bankr. D. Haw.1991)).

WHEREFORE, the United States Trustee asks that the application to employ as filed be denied and for such other and further relief as may be just.

Dated: August 24, 2016

Respectfully submitted,

Office of the U.S. Trustee
210 First Street, Suite 505
Roanoke, Virginia 24011
margaret.k.garber@usdoj.gov
(540) 857-2806

JUDY A. ROBBINS
United States Trustee
for Region Four

By: */s/ Margaret K. Garber*

Notice of Hearing

Please take notice that a hearing will be held in connection with foregoing objection on September 22, 2016 at 11:00 a.m. in the United States Bankruptcy Court located in Charlottesville, Virginia.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into the CM/ECF system on August 24, 2016, which caused same to be served on parties registered to receive electronic notice in this matter.

/s/ Margaret K. Garber

Assistant United States Trustee
Office of the U.S. Trustee
210 First Street, Suite 505
Roanoke, Virginia 24011
margaret.k.garber@usdoj.gov
(540) 857-2806